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CURRENT LEGISLATION

THE UNIFORM OCEAN BILL OF LADING.—With the revival of international shipping on a large scale at the conclusion of the World War, the question of the adoption of a uniform bill of lading for ocean shipments is once more claiming general attention. That there is a demand for such a bill, clearly setting forth the obligations and rights of the parties in interest, is evidenced by the widespread interest in the Hague and London conferences of 1921, and the July hearings before the committee of the House of Representatives wherein the question came up for discussion.¹ Granting the desirability of such a form bill, the question remains: Is its adoption and enforcement to be sought by legislative enactment or by mutual agreement among the shippers, carriers, bankers, and insurance underwriters?

Charles S. Haight of the New York Bar, Chairman of the Bill of Lading Committee of the International Chamber of Commerce, has gone on record as unequivocally favoring the latter method, in an article prepared for publication by the Chamber in Europe.² The report of the delegates of the British Bankers' Association to the Hague Conference of the International Law Association³ is in accord with this policy, which was adopted by the London conference and has been approved by other organizations and individuals interested in the problem.⁴ Below will be noted briefly the chief grounds for and objections to taking this stand.

Expedition is of primary importance. A survey of legislative progress in this country alone shows how notoriously slow the lawmaking body is to pass measures of this kind, with the great number of other more directly appealing problems continually clamoring for the legislator's attention, and the necessarily cumbersome process by which all are attacked. There are at least a dozen countries⁵ whose assent to some uniform bill is essential to make the scheme universally adopted and hence effective. Even assuming that measures could be introduced into the legislature of each one within a short time, it seems utterly improbable that the assent of even a small number could be secured before a good many years more under the present chaotic system will have gone by. On the other hand, unofficial representatives of the commercial interests of most of these sovereignties have already expressed their approval of the Hague Rules of 1921. These interests will be represented yearly in the meetings of the Inter-

¹ See, for example, Hearings before the Subcommittee on Marine Insurance of the Committee on the Merchant Marine and Fisheries of the House of Representatives (July 18, 19 and 20, 1921), particularly the testimony of the representative of the Insurance Company of North America, p. 218, the letter from the manager of the Southern Lumber Exporters' Ass'n, pp. 401, 403, and that of the president of the National Association of Waste Material Dealers, p. 406, and the report of the Imperial Shipping Committee, pp. 417, 421. The latter deals primarily with the necessity for uniform shipping legislation within the British Empire, but the discontent voiced with the general situation is universal.

² The concluding paragraphs of this article furnish the basis for this note.

³ Report of Sir James Hope Simpson and Mr. W. W. Paine on the Meetings of the Maritime Law Committee of the International Law Ass'n (Aug. 30 to Sept. 2, 1921) §3.

⁴ See, *e. g.*, *supra*, footnote 1, and *supra*, footnote 3.

⁵ Besides England this includes Canada, Australia, and New Zealand, which have their own statutes regulating bills of lading, and now, probably Ireland.

national Chamber of Commerce and in the conventions of other world-wide commercial and political institutions. Thus it appears not unreasonable that within a comparatively short period an adoption agreement may be reached through these channels.

Moreover, by any other means, uniformity seems impossible, even if it were possible to secure the enactments. The legislator's ear is always acutely attuned to the desires of his constituents, particularly the large commercial interests. In the Hague Bill of Lading as drawn up, and necessarily in any other that might be devised, each party involved in the business of trans-oceanic shipping has made certain concessions in order to secure certain guaranties. It is thus an embodiment of conflicting economic interests, and it is patent to what length such interests would go, working through lobbies, elaborate propaganda and even direct pressure on the lawmakers to eliminate from the bill features not advantageous to the particular interest. To hope that the bill of lading would be passed in its original form in even two or three of the nations interested, is optimistic; to expect a general uniformity is fantastic.

It is, however, pretended by no one that any bill when drawn up, no matter how carefully, is the last word on the subject. The Hague Bill is the product of the careful study of probably the most capable minds available, but it is admittedly only a starting point. Minor changes will have to be made as their advisability is suggested by actual practice in the use of the document. As economic conditions alter, fundamental amendments and additions will undoubtedly be imperative. To sew up control of these changes in the legislatures would be fatal to any hope of speedy alteration to meet the needs of changing times. With the control kept in the hands of the unofficial body which originally presented the Rules, these modifications could be made by the parties really vitally interested with the least possible delay and the greatest efficacy.

Such a plan of adoption and enforcement by mutual agreement is feasible. The provisions of the York-Antwerp Rules⁶ in regard to the adjustment of average have been generally incorporated into ocean bills of lading by voluntary acceptance. Moreover, a powerful sanction for the compulsory use of a uniform bill may be secured from the bankers. Their assistance is essential to the financing of practically all international commercial transactions. Such a bill is highly advantageous to them and they have been among the first to demand it. At present not only are their interests in shipments not sufficiently safeguarded, but their work is continually increased and made less profitable by the fact that almost every carrier uses a different bill from that used by the others, besides using varied ones for each different class of commodity shipped. Before acceptance as security, each bill must thus be individually studied, and even then the acceptor cannot be at all certain as to the extent to which his investment is protected. They have their national and international organizations, including practically every bank engaged in this type of business. A refusal to accept any bill not in the standard form will enforce universal adoption as effectively as legislative compulsion.

British shipowners have protested against the adoption of any rules on the ground that this savors of "State Control,"⁷ the ever present bugbear of commercial interests which have long enjoyed comparative immunity from governmental coercion. By voluntary adoption, however, such control may be avoided, whereas if something is not done to remedy conditions the very legislative action

⁶ A code of rules adopted at international conferences in 1864, 1877, and 1890. See Scrutton, *Charterparties and Bills of Lading* (17th ed. 1914) 266n. (1).

⁷ *Supra*, footnote 3

which is so much feared seems inevitable, to judge, as Mr. Haight has pointed out, from the report of the Imperial Shipping Committee.⁸

Others have feared that shippers may be willing to waive the application of the rules in certain particulars for a lowering of the freight rate. Such a doubt is unfounded for three reasons. In the first place, it is to be hoped that reliance may be placed on the integrity of the shippers and shipowners in upholding an agreement to which they have become parties. Secondly, as pointed out above, the strong financial arm of the banks may be relied on to force acquiescence, if necessary. Finally, there is always the fear of legislative interposition in the event of failure of the scheme. Non-coöperation by any party would mean failure.

A uniform ocean bill of lading must be adopted in the very near future. Those who seek to have it made effective by mutual agreement rather than by legislative enactment have every practical and theoretical argument in their favor and will, it is hoped, succeed.

⁸ *Supra*, footnote 1.